

BEFORE THE HEARING PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE NO. 02-466
RE: JUDGE JOHN RENKE, III

MOTION TO COMPEL CLARIFICATION

COMES NOW, the Honorable JOHN RENKE, III, by and through his undersigned counsel and files this his Motion to Compel Clarification, pursuant to Judicial Qualification Rule 12(a) and Florida Rule of Civil Procedure 1.280(b)(5), requesting the Hearing Panel to order Special Counsel to clarify the basis for its objection set forth in its Notice of Compliance with Second Demand for Rule 12(b) Materials and states in support the following information:

1. On May 3, 2005, Special Counsel filed its Notice of Compliance with Second Demand for Rule 12(b) Materials. While Special Counsel indicates it was giving “notice of compliance with Judge John Renke, III’s (“Judge Renke”) Second Demand for Rule 12(b) Materials served on April 1, 2005,” Special Counsel also objected to the Judge’s 12(b) demand. In pertinent part, Special Counsel stated “[t]he JQC objects to such demand to the extent it seeks production of materials which the JQC is not obligated to produce under Rule 12(b) and the controlling law.”

2. Judicial Qualifications Rule 12(a) indicates that the Rules of Civil Procedure are applicable to all proceedings before the Hearing Panel. Florida Rule of Civil Procedure 1.280(b)(5) requires a party who is objecting to a discovery demand to expressly state the claim of privilege and to describe any document(s) being withheld. Rule 1.280(b)(5) states as follows:

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Fla. R. Civ. Pro. 1.280(b)(5).

3. Rule 1.280(b)(5) “requires the production of a privilege log in order to preserve a privilege.” Kaye Scholer LLP v. Zalis, 878 So. 2d 447 (Fla. 3d DCA 2004)(citing TIG Ins. Corp. of America v. Johnson, 799 So. 2d 339, 449 (Fla. 4th DCA 2001)). The Zalis Court noted that the “purpose of this requirement is to ‘identify materials which might be subject to a privilege or work product protection so that a court can rule on the applicability of the privilege or protection’ prior to the trial.” Zalis at 449 (quoting General Motors Corp. v. McGee, 837 So. 2d 1010, 1033 (Fla. 4th DCA 2002)). The Court further recognized that any privilege claimed by the withholding party could be waived if

the court determines it failed to comply with the Rule 1.280(b)(5) requirements. Zalis at 449. See also Metabolife Int'l v. Holster, 888 So. 2d 140, 141 (Fla. 1st DCA 2004)(finding that the failure to file a privilege log warranted an implied waiver of any claims of privilege); Omega Consulting Group, Inc. v. Templeton, 805 So. 2d 1058, 1060 (Fla. 4th DCA 2002)(noting that a waiver of privilege claims is justified when the privilege log does not contain sufficient detail to meaningfully consider the privilege objection).

4. Special Counsel's Notice of Compliance with Second Demand for Rule 12(b) Materials does not set forth the basis for its stated objection. In addition, it does not attach a privilege log or otherwise identify any of the documents in its possession that are being withheld. Florida Rule of Civil Procedure 1.280(b)(5) requires Special Counsel to clarify the basis for its objection and to expressly state whether or not a privilege is being claimed. Further, Rule 1.280(b)(5) requires Special Counsel to file a privilege log describing the document with sufficient detail for the Hearing Panel to determine whether any claimed privilege applies.

WHEREFORE and by reason of the foregoing, the Judge respectfully requests the Hearing Panel to compel Special Counsel to expressly state the basis for its objection and if any privilege is claimed, to file the appropriate privilege log. The Judge further respectfully requests the Hearing Panel to find any claimed

privilege waived if it determines that Special Counsel has violated Florida Rule of Civil Procedure 1.280(b)(5).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of May, 2005, the original of the foregoing Motion to Compel has been filed via e-file@flcourts.org and furnished by UPS overnight delivery to:

Honorable Thomas D. Hall
Clerk
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Tallahassee, Florida 32399-1927

with copies by U. S. Mail to:

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